



18 MAY 2007

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In re Application of
Verra et al.
Application No. 10/560,146
PCT No.: PCT/FR04/01446
Int. Filing Date: 10 June 2004
Priority Date: 12 June 2003
Atty. Docket No.: 377/9-2182
For: Bone Marrow Aspiration Trocar

COMMUNICATION

This is in response to the "Petition To Invoke The Supervisory Authority Of The Director" filed on 08 March 2007.

DISCUSSION

In a decision mailed on 09 January 2007, the declaration filed on 14 November 2006 was not accepted under 37 CFR 1.42, without prejudice, because

Further examination of the declaration filed on 14 November 2006 reveals that Ollivier Verra, Florence Verra and Raphael Verra have signed in the capacity of "first," "second," and "third of three of the deceased inventor's sole heirs," respectively. This language does not unambiguously indicate that those three heirs are in fact all of the "sole heirs;" rather, the concept of "three of the deceased inventor's sole heirs" admits the possibility that the class of "the deceased inventor's sole heirs" includes more than three members, and that only a subset of "three of" those members have signed. In the absence of a statement that the three heirs who executed the declaration on behalf of Yvan Verra in fact are "all" of the heirs of Yvan Verra, it would not be appropriate to accept the declaration under 37 CFR 1.42 at this time.

It is noted that the declaration provides "the facts which the inventor would have been required to state" in that Yvan Verra's citizenship, residence and mailing address information is provided. Moreover, the declaration also includes the citizenship, residence and mailing address data for each of the heirs signing on behalf of Yvan Verra.

Petitioner urges that the declaration filed on 14 November 2006 be accepted because

No section of the Manual of Patent Examining Procedure (MPEP), nor of 37 C.F.R. 1.42 use the terms "all the heirs" or the "sole heirs", nor is there a requirement that this be stated in the inventor declaration: MPEP 409.01(a) "Application may be made by the heirs of the inventor... MPEP 409.01(d) "Hence, the person having authority corresponding to that of executor... for example, the heirs in the Federal Republic of Germany..."

There is no requirement that the Declaration be totally unambiguous, by law or rule, and it is instead sufficient according to the law and rule to clearly state that the signatories are "the heirs" of the deceased inventor. Moreover, such a Declaration, signed by the heirs, will be accepted at face value. Proof of authorization is not required. According

to MPEP 409.01(d), it is up to those signing to be sure that they are acting with proper authority, and so long as they are properly identified by name, address and citizenship, no more is required. By their signatures, the heirs are representing that they are authorized to proceed on behalf of the deceased inventor.

Petitioner is advised that the objection to the declaration raised in the 09 January 2007 decision was precisely that the set of "heirs" had not been properly identified, in that the record lacked any direct and explicit indication that the set of "heirs" signing the declaration in fact included *all* of the heirs. USPTO policy provides that, where no legal representative has been appointed or is required by the applicable law to be appointed, the application may be executed by *all* of the deceased inventor's heirs. Under these circumstances, acceptance of the declaration requires an unambiguous indication, either on the declaration document itself or on an accompanying statement from the heirs or their counsel, that those signing are all of the heirs. In the instant application, the first clear indication that all of the heirs had executed the declaration appears on page 3 of the instant petition: "there are only three 'sole heirs'."

Further inspection of the declaration document filed on 14 November 2006 reveals that Ollivier Verra, Florence Verra and Raphaël Verra are not only represented to be heirs; they also have been nominated as the 4th, 5th and 6th inventors, respectively. Since the declaration nominates an inventive entity differing from that appearing in the published international application, and since neither evidence of the recording of a change under PCT Rule 92*bis* nor a grantable submission under 37 CFR 1.497(d) has been submitted, it would not be appropriate to accept the declaration filed on 14 November 2006 at this time.

CONCLUSION

The declaration filed on 14 November 2006 is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

The petition for supervisory review under 37 CFR 1.181 is **DISMISSED**, without prejudice.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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